

**Discrimination Complaint Procedures
Attachment B**

Consent to mediate form

AGREEMENT TO PARTICIPATE IN MEDIATION

We, the undersigned parties, understand and agree to the following in executing this “Agreement to Participate in Mediation”:

Definition of mediation. Mediation is a process in which a neutral (the mediator) assists parties to a conflict in finding a mutually acceptable solution to their dispute.

Role of the mediator. The mediator facilitates discussion between the parties by assisting them in communicating, identifying and clarifying issues, and exploring potential solutions. The parties decide the outcome of the mediation.

Role of the parties. Each party agrees to participate in mediation in good faith and agrees to treat others in the mediation with respect and courtesy.

Confidentiality. Communications in mediation are confidential and may not be used in subsequent judicial or administrative proceedings, except for (a) communications used to plan or commit a crime, (b) threats of bodily injury, (c) information otherwise discoverable by legal procedures, (d) in any complaint for misconduct against an attorney or mediator who participates in the mediation process; (e) in any legal action to vacate the agreement, (f) when the parties agree to waive confidentiality in writing, or (g) as otherwise provided by law or rule. Threats of personal harm may be disclosed by the mediator as reasonably necessary to prevent people from harm.

In addition, all memoranda, work products and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made by the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except:

- (i) where all parties to the mediation agree, in writing, to waive the confidentiality,
- (ii) in a subsequent action between the mediator or mediation program and a party to the mediation for damages arising out of the mediation,
- (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation,
- (iv) where a threat to inflict bodily injury is made,
- (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime,

- (vi) where an ethics complaint is made against the mediator by a party to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint,
- (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation, or
- (viii) as provided by law or rule.

Voluntary. Mediation is voluntary. Any party, or the mediator, may decide to stop the mediation at any time for any reason.

Joint and separate sessions. The mediation generally will occur with all parties present. The mediator may also meet separately with each party.

Legal advice. The mediator does not provide legal advice. Each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so.

Agreement. All terms of settlement are non-binding until they are put into a written agreement *and* signed by all parties. Any mediated agreement may affect the legal rights of the parties. Each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement.

Party signature

Party signature

Party's representative (if present)

Party's representative (if present)

Other person present

Other person present

Mediator

BABEL NOTICE (29 C.F.R. § 38.9(g)(3)):

This document contains vital information. If English is not your preferred language, contact **[insert EO Officer's name and contact information]** to obtain translation and/or interpretation services for the content of this document.